

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

HARTFORD ACCIDENT AND INDEMNITY  
COMPANY and FIRST STATE INSURANCE  
COMPANY,

Plaintiffs,

v

No 4:08-CV-01687-CAS

THE DOE RUN RESOURCES CORPORATION  
f/k/a ST. JOE MINERALS CORPORATION,

and

ZURICH AMERICAN INSURANCE COMPANY  
as successor-in-interest to ZURICH INSURANCE  
COMPANY, U.S. BRANCH

Defendants.

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THE DOE RUN RESOURCES CORPORATION,

Counter-Claimant,

v.

HARTFORD ACCIDENT AND INDEMNITY  
COMPANY and FIRST STATE INSURANCE  
COMPANY,

Counter-Defendants.

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**THE DOE RUN RESOURCES CORPORATION'S MOTION FOR LEAVE TO FILE  
SUPPLEMENT TO REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS OR, IN  
THE ALTERNATIVE, STAY ZURICH'S CROSS-CLAIM FOR DECLARATORY  
RELIEF, BASED ON NEWLY DEVELOPED FACTS; MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT THEREOF**

The Doe Run Resources Corporation f/k/a St. Joe Minerals Corporation (“Doe Run”) respectfully moves this Court for an Order granting leave to Doe Run to file a supplement to its reply brief in support of its Motion to Dismiss or, in the Alternative, Stay Zurich’s Cross-Claim for Declaratory Relief. In support of this Motion, and pursuant to Local Rule 7-4 01, Doe Run respectfully submits the accompanying memorandum of points and authorities and Exhibits A (Doe Run’s Supplemental Brief) and B (Declaration of Marc D Halpern) thereto.

Dated: April 21, 2009

Respectfully submitted,

ABELSON | HERRON LLP

By: /s/ Heather L. Mayer

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The Doe Run Resources Corporation*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

HARTFORD ACCIDENT AND INDEMNITY  
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THE DOE RUN RESOURCES CORPORATION,

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HARTFORD ACCIDENT AND INDEMNITY  
COMPANY and FIRST STATE INSURANCE  
COMPANY,

Counter-Defendants.

**DOE RUN'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
MOTION FOR LEAVE TO FILE SUPPLEMENT TO REPLY IN SUPPORT OF  
MOTION TO DISMISS OR, IN THE ALTERNATIVE, STAY ZURICH'S CROSS-  
CLAIM FOR DECLARATORY RELIEF, BASED ON NEWLY DEVELOPED FACTS**

The Doe Run Resources Corporation (“Doe Run”) respectfully moves this court for an order granting leave to Doe Run to file a supplement to its reply brief filed in support of its pending Motion to Dismiss or, in the Alternative, Stay Zurich’s Cross-Claim for Declaratory Relief (the “Motion to Dismiss”), in order to alert the Court to certain newly developed facts that may assist the Court’s determination. The additional information provided by the supplemental brief was not available at the time Doe Run filed its initial reply, and directly addresses arguments made by Zurich American Insurance Company (“Zurich”) in its opposition to Doe Run’s Motion to Dismiss.

This Court has the authority to allow the filing of a supplement to Doe Run’s reply brief. See Local Rule 7-4.01(C); Goldsberry v. Air Methods Corp., 2009 U S Dist LEXIS 12124 (E D. Mo Feb. 18, 2009) (granting defendants’ joint motion to file supplemental authority in support of their reply)

Here there is good cause to grant leave to Doe Run to file a supplemental brief because the information provided in its supplemental brief (attached hereto as Exhibit A), is directly relevant to arguments made by Zurich in its Opposition to Doe Run’s Motion to Dismiss. In particular, at a hearing that took place on April 20, 2009, in the pending and previously filed coverage action brought by Doe Run, captioned The Doe Run Resources Corporation v. Zurich-American Insurance Company, Superior Court of the State of California, County of Orange, Case No 30-2008-00180034 (the “California Action”), the Honorable Stephen Sundvold addressed issues regarding the convenience and propriety of the California forum. See Exhibits A and B attached hereto. Accordingly, Doe Run’s supplemental brief is directly relevant to its Motion to Dismiss and responsive to Zurich’s

opposition. Moreover, the information provided in the supplemental brief was not available at the time Doe Run filed its original reply on April 13, 2009

For the foregoing reasons, Doe Run respectfully requests that its Motion for Leave to File a Supplement to Reply Brief be granted.

Dated: April 21, 2009

Respectfully submitted,

ABELSON | HERRON LLP

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*Counsel for Defendant and Counter-Claimant  
The Doe Run Resources Corporation*

**CERTIFICATE OF SERVICE**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI – EASTERN DIVISION**

**Hartford Accident And Indemnity Company, et al.**

**v.**

**The Doe Run Resources Corporation, et al.**

**District Court Case No. 4:08-cv-01687-CAS**

I am over the age of 18 and not a party to the within action; I am employed by Abelson | Herron, LLP in the County of Los Angeles at 333 South Grand Avenue, Suite 1550, Los Angeles, California, 90071-1559.

On April 21, 2009, I served the document below described as:

**THE DOE RUN RESOURCES CORPORATION'S MOTION FOR LEAVE TO  
FILE SUPPLEMENT TO REPLY BRIEF IN SUPPORT OF MOTION TO  
DISMISS OR, IN THE ALTERNATIVE, STAY ZURICH'S CROSS-CLAIM FOR  
DECLARATORY RELIEF, BASED ON NEWLY DEVELOPED FACTS;  
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

The document was served by the following means:

- × **BY ELECTRONIC TRANSMISSION VIA NEF** I hereby certify that I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which sent Notifications of Electronic Filing to the persons at the e-mail addresses listed immediately below. Accordingly, pursuant to the Court's Local Rule 5-2 12, I caused the documents to be sent electronically to the persons listed immediately below.

E-mail: [tjm@heplerbroom.com](mailto:tjm@heplerbroom.com)  
E-mail: [mly@heplerbroom.com](mailto:mly@heplerbroom.com)  
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Russell F. Watters, Esq.  
Timothy J. Wolf, Esq.  
Patrick A. Bousquet, Esq.  
BROWN & JAMES, P.C.

Counsel for Defendant,  
ZURICH AMERICAN INSURANCE  
COMPANY

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Executed on April 21, 2009 at Los Angeles, California

/s/ Heather L. Mayer  
Heather L. Mayer

**Certificate of Service *Cont.***


- × **BY U.S. MAIL** I enclosed the document in a sealed envelope addressed to the persons at the address listed immediately below and placed the sealed envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the said date, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelopes with postage fully prepaid.

James P. Ruggeri, Esq.  
Joshua D. Weinberg, Esq.  
HOGAN & HARTSON LLP  
555 Thirteenth Street, NW  
Washington, D.C. 20004

Counsel for Plaintiffs and Counter-Defendants,  
HARTFORD ACCIDENT AND INDEMNITY  
COMPANY; and  
FIRST STATE INSURANCE COMPANY

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Executed on April 21, 2009 at Los Angeles, California.

  
\_\_\_\_\_  
Soonja Bin

# Exhibit A



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

HARTFORD ACCIDENT AND INDEMNITY  
COMPANY and FIRST STATE INSURANCE  
COMPANY,

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No. 4:08-CV-01687-CAS

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Defendants.

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Counter-Claimant,

v.

HARTFORD ACCIDENT AND INDEMNITY  
COMPANY and FIRST STATE INSURANCE  
COMPANY,

Counter-Defendants.

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**DOE RUN'S SUPPLEMENT TO REPLY IN SUPPORT OF MOTION TO DISMISS  
OR, IN THE ALTERNATIVE, STAY ZURICH'S CROSS-CLAIM FOR  
DECLARATORY RELIEF, BASED ON NEWLY DEVELOPED FACTS**

Doe Run respectfully submits the following supplement to its briefing in support of the pending Motion to Dismiss or, in the Alternative, Stay Zurich's Cross-Claim for Declaratory Relief, in order to alert the Court to certain newly developed facts that may assist the Court's determination.

In its Opposition to Doe Run's Motion to Dismiss, Zurich asserted that California has no interest in the dispute between Doe Run and Zurich. Opposition at 6-8. In support of that argument Zurich referenced filing a Motion to Dismiss for *Forum Non Conveniens* (the "Forum Motion") in the pending, and previously filed, coverage action brought by Doe Run, captioned The Doe Run Resources Corporation v. Zurich-American Insurance Company, Superior Court of the State of California, County of Orange, Case No. 30-2008-00180034 (the "California Action"). See Declaration of Marc D. Halpern filed herewith ("Halpern Decl."), ¶ 5, 7. The claims between Doe Run and Zurich in the California Action are essentially the same as Zurich's cross-claims against Doe Run in this action. See id. at ¶ 6. Zurich's principal argument in the Forum Motion was that the coverage disputes should be resolved in this action rather than the California Action. See id. at ¶ 8.

The Court in the California Action disagreed. Today, April 20, 2009, Zurich's Forum Motion came on for hearing. Id. at ¶ 9. Based on full briefing and oral argument, the Court denied Zurich's Motion, citing each of the following grounds at the hearing:

1. Doe Run and Zurich have been litigating related coverage issues under the Zurich policies in Orange County Superior Court since 1992, in the St. Joe Action and now the California Action<sup>1</sup>;
2. Zurich brought and lost multiple similar *forum non conveniens* motions in the St. Joe Action;
3. The California Action was filed before this action;
4. Pursuant to the Settlement Agreement entered into between Zurich and Doe Run at the conclusion of the St. Joe Action, Doe Run is entitled to continue pursuing its coverage claims against Zurich in Orange County Superior Court;
5. When the St. Joe Action was filed, Doe Run, then known as St. Joe Minerals Corporation, was headquartered in California; and
6. The rulings in the St. Joe Action are binding as to the present coverage disputes Id. at ¶¶ 10-11.

The ruling of the Court in the California Action further weighs in favor of granting Doe Run's pending Motion to Dismiss.

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<sup>1</sup> In 1992, Doe Run filed a coverage action in Orange County Superior Court, California, against Zurich and others. The case was captioned St. Joe Minerals Corporation v. Allianz Insurance Company, et. al., Case No. 697526, and although all other insurers were dismissed early in the action, the litigation between Zurich and Doe Run continued until 2005 (the "St. Joe Action"). The St. Joe Action is discussed in Doe Run's Motion to Dismiss papers. Halpern Decl. at ¶ 3.

Dated: April 21, 2009

Respectfully submitted,

ABELSON | HERRON LLP

By: /s/ Heather L. Mayer

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Counsel for Defendant and Counter-Claimant  
The Doe Run Resources Corporation

# Exhibit B

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

HARTFORD ACCIDENT AND INDEMNITY  
COMPANY and FIRST STATE INSURANCE  
COMPANY,

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No. 4:08-CV-01687-CAS

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and

ZURICH AMERICAN INSURANCE COMPANY  
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COMPANY, U.S. BRANCH

Defendants.

THE DOE RUN RESOURCES CORPORATION,

Counter-Claimant,

v.

HARTFORD ACCIDENT AND INDEMNITY  
COMPANY and FIRST STATE INSURANCE  
COMPANY,

Counter-Defendants.

**DECLARATION OF MARC D. HALPERN IN SUPPORT OF THE DOE RUN  
RESOURCES CORPORATION'S SUPPLEMENT TO REPLY TO MOTION TO  
DISMISS OR, IN THE ALTERNATIVE, STAY ZURICH'S CROSS-CLAIM FOR  
DECLARATORY RELIEF**

I, Marc D. Halpern, declare as follows:

1. I am an attorney with the law firm of Abelson | Herron LLP, counsel for The Doe Run Resources Corporation, f.k.a St. Joe Minerals Corporation f k a. St. Joseph Lead Company (collectively “Doe Run”) in the above-referenced action. I am licensed to practice law in the state of California and admitted to practice *pro hac vice* before this Court in connection with this matter.

2. I also am counsel for Doe Run in the pending coverage litigation in California referenced *infra* as the California Action. As counsel for Doe Run in the California Action I am familiar with the litigation history and the various filings and orders entered therein. On behalf of Doe Run, I also assist in overseeing the maintenance of Doe Run’s litigation files from the California Action, and am familiar with the maintenance protocols associated with those files and have personal knowledge regarding the accuracy and integrity of those files.

3. On or about October 5, 1992, Doe Run filed an action in the Superior Court of the State of California, County of Orange against its primary and excess insurance carriers, including Zurich, for coverage relating to various claims. The case was captioned *St. Joe Minerals Corporation v. Allianz Insurance Company, et. al.*, Superior Court of the State of California, County of Orange, Case No. 697526 (the “St. Joe Action”).

4. I have personal knowledge of the matters stated herein and, if called to testify, could and would testify competently thereto.

5. On or about July 16, 2008, Doe Run filed an action against Zurich American Insurance Company (“Zurich”) in the Superior Court of the State of California, County of Orange, case No. 30-2008-00180034, alleging causes of action for (1) Breach of Duty to

Defend; (2) Declaratory Relief; (3) and Unreasonable Refusal to Pay (the “California Action”). The California Action essentially continues where the St Joe Action left off and seeks to address various coverage issues. Doe Run filed a First Amended Complaint (“FAC”) on December 22, 2008. The FAC alleges causes of action for (1) Declaratory Relief: Duty to Indemnify (BNSF Action); (2) Declaratory Relief: Duty to Indemnify (Warden Action); and (3) Declaratory Relief: Duty to Indemnify (Pending Lawsuits).

6 The claims between Doe Run and Zurich in the California Action are essentially the same as Zurich’s cross-claims against Doe Run in this action.

7 On March 20, 2009, Zurich filed a Motion to Dismiss on the grounds of *Forum Non Conveniens* (the “Forum Motion”) in the California Action.

8 Zurich’s principal argument in the Forum Motion was that the coverage disputes should be resolved in this action rather than the California Action.

9 On April 20, 2009, the Honorable Stephen Sundvold of the Superior Court of the State of California, County of Orange, presided over the hearing on Zurich’s Forum Motion

10 Based on the briefing and oral argument, the Court denied Zurich’s Forum Motion

11 At the hearing, Judge Sundvold enumerated the following grounds for denying Zurich’s Forum Motion:


- Doe Run and Zurich have been litigating related coverage issues under the Zurich policies in Orange County Superior Court since 1992;



- Zurich brought and lost multiple similar *forum non conveniens* motions in the St. Joe Action;
- The California Action was filed before this action;
- Pursuant to the Settlement Agreement entered into between Zurich and Doe Run, Doe Run is entitled to continue pursuing its coverage claims against Zurich in Orange County Superior Court;
- When the St. Joe Action was filed, Doe Run (at that time named St. Joe Minerals Corporation) was headquartered in California; and
- The rulings in the St. Joe Action are binding as to the present coverage disputes.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 20th day of April 2009 at San Diego, California.

  
Marc D. Halpern